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January 30, 1974

FILE NO. S-638

COUNTIES:
Recorder of Deeds

Honorable Richard S. Simpson
State's Attorney
Lawrence County
Courthouse
Lawrenceville, Illinois 62439

Dear Mr. Simpson:

I have your letter wherein you state:

"In re. England Pond Drainage District -
Improvement

The above drainage district has a large number
of right-of-way agreements to be recorded in
the Lawrence County Recorder's Office in con-
nection with the above improvement project.

Please issue an opinion for the district ex-
empting them from the necessity of paying
recording fees on these rights-of-ways since
they are a municipal corporation."

The general rule is stated in Sprinkle v. County of Cass,

340 Ill. 382 at page 383;

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"Compensation for official services rendered in behalf of the State or any public corporation rests wholly upon statutory provision or authority. (City of Decatur v. Vermillion, 77 Ill. 315; Bruner v. Madison County, 111 id. 11; May v. City of Chicago, 222 id. 595; Gathemann v. City of Chicago, 263 id. 292; 1 Dillon on Mun. Corp.--5th ed.--sec. 426; 2 McQuillin on Mun. Corp.--2d ed.--sec. 544.) Public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law. (City of Decatur v. Vermillion, supra.) * * * "

Section 9.07 of "AN ACT to revise the law in relation to recorders" (Public Act 78-770) provides:

"The recorder of deeds elected as provided for in this Act shall receive such fees as are or may be provided for him by law, in case of provision therefor; otherwise he shall receive the same fees as are or may be provided in this section to be paid to the county clerk for his services in the office of recorder of deeds for like services.

For recording deeds or other instruments \$5 for the first 2 pages thereof, plus \$1 for each additional page thereof, however if any page of any instrument exceeds 120 square inches such excess of any such page shall, for the purpose of fixing the fee for recording, be regarded as an additional full page. The aggregate minimum fee for recording any one instrument shall not be less than \$5.

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In Volume 76 of Corpus Juris Secundum at page 125

(Section 20 of Records) is found the following:

" * * * Where a statute provides the fee which may be charged for recording an instrument, such a fee is an arbitrary charge. Under such a statute it is the duty of the recording officer to charge such fee for recording every instrument, and no officer has authority to change the fees or to depart from the terms prescribed. * * * "

In the same volume and at the same page (Section 21 of Records) it is stated:

"It has been held that it is the contemplation of recording laws that recording fees are to be paid by those whose interests are protected by recordation, whatever may be the commercial custom."

Until they were specifically exempt by Public Act 78-455, there is no question that units of local government were required to pay fees to the circuit clerk. If the General Assembly had intended that units of local government be exempt from recorder's fees, it would have made a clear statement on the matter. I find no legal authority, either statute or case law, which would exempt the drainage district from the necessity of paying recording fees on the right-of-way

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agreements which are filed in the county recorder's office. Consequently, I am of the opinion that such fees should be paid by the drainage district. Assuming, therefore, that the right-of-way agreements are in the nature of easements the fee required by section 9.07 of "AN ACT to revise the law in relation to recorders" is \$5.00 for the first two pages plus \$1.00 for each additional page.

Very truly yours,

A T T O R N E Y G E N E R A L